

2013 DRAFTING REQUEST

Bill

Received: 10/16/2013 Received By: jkuesel  
 Wanted: As time permits Same as LRB:  
 For: Glenn Grothman (608) 266-7513 By/Representing: Rachel VerVelde  
 May Contact: Drafter: jkuesel  
 Subject: Unemployment Insurance Addl. Drafters: mduchek

Extra Copies:

Submit via email: YES  
 Requester's email: Sen.Grothman@legis.wisconsin.gov  
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Coverage of direct sellers

Instructions:

Per LRB-2588/4, with permission of Rep. Knodl (EM, BJ Dernbach, 10/16/13).

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 10/16/2013	evinz 10/16/2013					
/1			rschluet 10/16/2013		mbarman 10/16/2013	lparisi 10/18/2013	State

FE Sent For:



@ intro.

<END>

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Wanted: **As time permits** Same as LRB:  
For: **Glenn Grothman (608) 266-7513** By/Representing: **Rachel VerVelde**  
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Subject: **Unemployment Insurance** Addl. Drafters: **mduchek**

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LDNOTE

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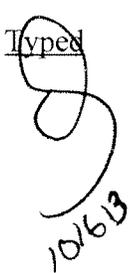
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12/1	jkuesel 10/14/13	1 epv 10/16/13	 10/16/13	==	JACKET RAC SENATE		

FE Sent For:

<END>

## Kuesel, Jeffery

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**To:** Dernbach, BJ  
**Subject:** RE: Submitted: LRB -2588/4 Topic: Coverage of direct sellers

BJ,  
I will take care of it.

Jeff Kuesel

**From:** Dernbach, BJ  
**Sent:** Wednesday, October 16, 2013 12:47 PM  
**To:** Kuesel, Jeffery  
**Cc:** VerVelde, Rachel; Austinson, Mark  
**Subject:** Submitted: LRB -2588/4 Topic: Coverage of direct sellers

Jeff,

Could you please draft a Senate Companion and release it to the Grothman Office re: Rachel.

Thanks.

BJ Dernbach  
Office of Representative Dan Knodl  
24th Assembly District  
(608) 266-3796  
<http://legis.wisconsin.gov/assembly/knodl/>

 /Rep. Knodl



DNOTE

State of Wisconsin  
2013 - 2014 LEGISLATURE

-344611



LRB-2588/4  
JTK:eev:jf

THU 10/17 - AM

**2013 BILL**

regen

1 AN ACT *to repeal and recreate* 108.02 (15) (k) 16. of the statutes; **relating to:**  
2 coverage of certain individuals engaged in sales activity outside a permanent  
3 retail establishment under the unemployment insurance law.

***Analysis by the Legislative Reference Bureau***

Currently, if an individual is performing services for an employer other than a governmental or nonprofit employer, except as the employer otherwise elects with the approval of the Department of Workforce Development (DWD), and the individual receives remuneration solely from commissions, overrides, bonuses, or differentials directly related to sales or other output derived from in-person sales or solicitation of orders from ultimate consumers primarily in the home, the services performed by the individual are not covered under the unemployment insurance (UI) law. An individual who performs such services is not eligible to claim UI benefits based on the performance of the services and a person who employs an individual to perform such services is not subject to a state UI contribution requirement (a requirement to pay taxes) based on the performance of the services.

This bill provides instead that if an individual is performing services for an employer other than a governmental or nonprofit employer, except as the employer otherwise elects with the approval of DWD, and the individual is engaged, in a home or otherwise than in a permanent retail establishment, in selling or soliciting the sale of consumer products for use, sale, or resale by the buyer and substantially all of the remuneration for the services is directly related to the sales or other output rather than to hours worked, then a claimant is not eligible to claim UI benefits based on



DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

-3446/1dn  
LRB-2588/2dn  
JTK:eev:ev

July 31, 2018

date

~~Representative Knodl.~~ Senator Grothman:

This redraft adjusts the proposed rewording of s. 108.02 (15) (k) 16., stats., so that it is substantively different than the corresponding provision in the Federal Unemployment Tax Act (FUTA), 26 USC 3508 (b) (2).

~~Under both the draft and FUTA, the exclusion from UI coverage only applies if the affected employee's employment contract provides that the services to be performed by the employee are not subject to federal unemployment taxes. Under this redraft it is possible that services would be taxed under federal law but not under state law. However, both exclusions would nevertheless be subject to this proviso. This could have the effect of negating the changes made in the redraft to the extent that they are not interpreted in the same way that the IRS interprets FUTA.~~

Normally, unless a state is subject to additional assessments resulting from federal loans, employment that is covered under FUTA (26 USC 3301) is subject to a federal tax of 6.0 percent on the first \$7,000 of annual taxable wages paid to an employee. FUTA (26 USC 3302) permits a credit of up to 5.4 percent against this tax for unemployment taxes that were paid, or but for an employer's favorable layoff experience, would be payable to this state on these same wages. As a result, if any employment excluded under s. 108.02 (15) (k) 16., stats., is not similarly excluded under FUTA, an employer affected by the exclusion could forfeit its federal tax credit on that employment, and if the employer has a favorable layoff experience, the employer could be required to pay increased federal taxes on the state-excluded employment as compared to the taxes that would be payable under current law.

Please let me know if you would like to discuss these issues further.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3446/1dn  
JTK:eev:rs

October 16, 2013

Senator Grothman:

This draft adjusts the proposed rewording of s. 108.02 (15) (k) 16., stats., so that it is substantively different than the corresponding provision in the Federal Unemployment Tax Act (FUTA), 26 USC 3508 (b) (2).

Normally, unless a state is subject to additional assessments resulting from federal loans, employment that is covered under FUTA (26 USC 3301) is subject to a federal tax of 6.0 percent on the first \$7,000 of annual taxable wages paid to an employee. FUTA (26 USC 3302) permits a credit of up to 5.4 percent against this tax for unemployment taxes that were paid, or but for an employer's favorable layoff experience, would be payable to this state on these same wages. As a result, if any employment excluded under s. 108.02 (15) (k) 16., stats., is not similarly excluded under FUTA, an employer affected by the exclusion could forfeit its federal tax credit on that employment, and if the employer has a favorable layoff experience, the employer could be required to pay increased federal taxes on the state-excluded employment as compared to the taxes that would be payable under current law.

Please let me know if you would like to discuss these issues further.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**Parisi, Lori**

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**From:** Sen.Grothman  
**Sent:** Friday, October 18, 2013 9:26 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -3446/1 Topic: Coverage of direct sellers

Please Jacket LRB -3446/1 for the SENATE.